



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Release Number:: **201151027**  
Release Date: 12/23/2011  
Date: September 27, 2011  
UIL Code: 501.04-00  
501.04-07

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(4). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040(CG) (11-2005)  
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224**

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: August 10, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

C = state  
Q = date  
S = geographic area  
t = dollar amount

**UIL:**

501.04-00  
501-04-07

Dear

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

**Issues**

- Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons described below.

Letter 4034(CG) (11-2005)  
Catalog Number 47628K

## Facts

You were incorporated in State of C on Q. Your articles of incorporation state the following purpose:

The corporation is organized exclusively to manage the business and affairs of the S Subdivision....

You are a homeowners' association consisting of 15 lots, three of which are common areas. The three common areas consist of the following:

Lot 12: A portion of a lake that is partially contained within the other lots in your subdivision.

Lot 14: A road that runs through the subdivision providing members access to their properties.

Lot 15: A one acre natural land area between the boundary line of properties and the access road

The remaining 12 lots are owned by nine individuals. You will maintain, repair and insure the common areas (Lots 12, 14 and 15). To do so, you collect dues and assessments from members and engage in the following activities:

- Pay property taxes for the common areas
- Pay attorney fees for filing required biennial reports with the state
- Pay insurance premium for \$t liability policy for the lake
- Build a reserve fund to pay for road maintenance
- Collect dues to pay for professional tax assistance

The lots in the subdivision you serve are configured in a U-shaped arrangement. The access road connects to a highway and winds in front of the lots and is open to the general public. Only individually owned lots are located along this road.

Lot 12 represents only a portion of the total lake. The remainder of the lake is owned by individuals who are members of your organization. Although the lake was designed to control erosion and run-off from surrounding farm ground, it is used primarily for recreational purposes such as fishing. Except for one individually owned lot, all other lots in your organization border the lake. There is no public access to the lake. The topography of the land does not allow public access to the lake as the developer did not make any provision for access to the lake other than passing through individually owned lots. Thus, Lot 12 is accessible only to your members and their guests. Further, allowing public access would increase the liability insurance that you pay with respect to

Lot 12. Paragraph 18 of your general covenants requires property owners in your association whose land contains any part of water reservoir to maintain liability insurance. Paragraph eighteen of your general covenants further provides that property owners may assign this responsibility to you (the homeowner's association.) The premium payment for the insurance policy paid in your most recent fiscal year represents about one-half of your income for that year.

The non-building lot that you maintain could be accessed by the general public, however, you explained there would be no reason for anyone to access this lot as they would be risking chigger, tick and mosquito attacks. This lot is a natural area that serves as a water run-off to the lake.

You do not perform exterior maintenance to private residences. You stated that, upon dissolution, your assets would be distributed in accordance with state law and that the balance would be equitably distributed to lot owners of record at that time.

### **Law**

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes and no part of the net earnings of such entity inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Treasury Regulation 1.501(c)(4)-1 provides in part that a civic league or organization may be exempt as an organization described in section 501(c)(4) [26 USCS § 501(c)(4)] if it is not organized or operated for profit; and it is operated exclusively for the promotion of social welfare.

An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of charitable set forth in paragraph (d)(2) of § 1.501(c)(3)-1 and is not an action organization as set forth in paragraph (c)(3) of § 1.501(c)(3)-1.

Rev. Rul. 74-99; 1974-1 C.B. 131 - A homeowners association, to qualify for exemption under section 501 (c) (4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private

residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

Rev. Rul. 80-63, 1980 CB 116 provides additional clarification for Rev. Rul. 74-99, above. It explains the term "community" does not embrace a minimum area or a certain number of homeowners. Instead, whether a particular homeowners' association meets the requirements of conferring benefits on a community must be determined according to the facts and circumstances of the individual case. For instance, if the association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community.

Flat Top Lake Ass'n v. United States, (1989 4th Circuit) 868 F.2d 108 The Court held that a homeowners association did not qualify for exemption under section 501(c)(4) of the Code when it did not benefit a "community" bearing a recognizable relationship to a governmental unit and when its common areas or facilities were not for the use and enjoyment of the general public.

### **Application of Law**

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare may be exempt from federal income tax. Treasury Regulation 1.501(c)(4)-1 defines social welfare as primarily engaged in promoting in some way the common good and general welfare of the people of the community. As you are conducting activities that support only a select few private residences, you do not promote the common good and general welfare of the people in the community, but rather promote the interests of the nine property owners who are members of your association.

Rev. Rul. 80-63 explained that if an association owns and maintains common areas and facilities for the use and enjoyment of the general public as distinguished from areas and facilities whose use and enjoyment is controlled and restricted to members of the association then it may satisfy the requirement of serving a community. This ruling emphasizes the third criterion outlined in Rev. Rul 74-99, requiring common areas be operated for the use and enjoyment of the general public. You have three common areas:

Lot 12 is accessible only to your members and is used primarily for fishing. Although you explained that this lake was designed to control erosion and collect water run-off, you did not explain how this provides a community benefit. Further, even if the lake provided a community benefit by collecting water and preventing erosion you do not make payments towards the maintenance of the lake. The only payment you make in connection with the lake is on the premium

of a liability policy, which according to paragraph 18 of your bylaws, is ultimately the responsibility of your members. Because Lot 12 is accessible only to your members, and appears to provide benefits only to their property, you are operating in the interest of your members rather than providing a community benefit.

Lot 14 is open to the general public, but there would be no reason for the general public to access this road except to visit the homes of your members. Accordingly, the road serves as a benefit to your members only.

Lot 15 serves no general purposes, albeit accessible to anyone publicly. In fact, you explained that accessing this lot may cause physical harm in the form of insect bites. The primary purpose of Lot 15 is to serve as a water run-off, which protects the homes of your members.

Although two of these areas are, by definition, open to the public no individuals outside of your members would derive any benefit from the use of or have any reason to enter these two lots. The lake for which you carry liability insurance is restricted from public access. Persons accessing the lake must receive permission from your members who restrict and control access to the lake. The use and/or enjoyment of the only public common areas within your association's property are under the control and restriction of your members. Because all of your common areas have no use or enjoyment to the general public, you do not bestow a community benefit and thus do not qualify for exemption under section 501(c)(4) of the Code.

The Court in Flat Top Lake Ass'n v. United States held that the criteria set forth in Rev. Rul. 74-99 must be met in order for a homeowners association to qualify for exemption under section 501(c)(4) of the Code. Based on the details presented herein you do not meet the criteria set forth in Rev. RUI. 74-99 and therefore do not qualify as a homeowners association exempt under 501(c)(4).

## **Conclusion**

Because you operate primarily for the benefit of your members and not for the social welfare or common good of the community in general, you do not qualify for exemption under section 501(c)(4) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.



Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure, Publication 892